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FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			SCHEIBEL, ROBERT C	
			ART UNIT	PAPER NUMBER
			2666	

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/821,776

Applicant(s)

SAINT-HILAIRE ET AL.

Examiner

Robert C. Scheibel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-11, 13-16, 23, 24, 26, 27 and 33-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11, 13-16, 23-24, 26-27, and 33-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

- This Action acknowledges Applicant's Amendment and Request for Continued Examination (RCE) received on 1/5/2006.
- Claims 1, 9, 23, and 33 are currently amended.
- Claims 1-3, 5-11, 13-16, 23-24, 26-27, and 33-35 are currently pending.

### ***Response to Arguments***

1. Applicant's arguments, see pages 11-13, filed 1/5/2006, with respect to the rejection of claims 1-3, 5-11, 12-16, 23-24, 26-27, and 32-36 have been considered but are moot in view of the new grounds of rejection. Applicant has significantly amended the independent claims 1, 9, and 23 and as such, the grounds of rejection have changed accordingly. However, Examiner has used the same references as the previous rejection and will provide responses to Applicant's arguments which are relevant to the rejection presented herein.

In the first 3 paragraphs of page 11, Applicant provides introductory comments to the present remarks and summarizes the previous rejection. In the fourth paragraph of page 11, Applicant explains the amendments made regarding claims 1, 9, and 23.

In the fifth paragraph of page 11, Applicant presents arguments regarding the rejection of claims 32-36 from the previous office action. Applicant argues that the passages of Cruickshank cited in the rejection merely disclose selecting between currently available interfaces based on QoS; Applicant contrasts this with the claims by indicating that the amended independent claims specify opening new interfaces. Examiner generally agrees with this characterization of Figure 3B of Cruickshank. However, the grounds of rejection have been modified herein; however, as

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discussed in more detail below, Cruickshank also discloses a “poor Voice Quality flag” (see lines 45-50 of column 3) which effectively opens (based on a usage parameter (QoS)) a WAN interface. This discloses the limitations recited in the “automatically determining whether at least one additional interface” limitation, as discussed in the rejection herein.

In the first full paragraph of page 12, Applicant discusses a passage of Cruickshank in which a new PBX is manually added to a corporate network and contrasts this with the present invention. The present rejection does not rely upon this addition of a new PBX; the fact that Cruickshank discloses a manual method for adding an interface does not change the fact that Cruickshank also discloses an automatic method for doing the same as discussed in the rejection herein.

### ***Claim Objections***

2. Claims 1, 9, and 23 are objected to because of the following informalities: the phrase “said automatically determining” (lines 4, 6, and 10, respectively) should be changed to “said automatically determining one of a plurality of available interfaces”. There are now three different steps starting with “automatically determining”, and this change would eliminate any possible confusion regarding this limitation. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims **1-3, 5-11, 13-16, 23-24, 26-27, and 33-35** rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,137,802 to Jones et al in view of U.S. Patent 6,389,005 to Cruickshank.

Regarding claims **1, 9, and 23**, Jones discloses the limitation of automatically determining one of a plurality of available interfaces (the wired interface (46 of Figure 3, 52 of Figure 4) and the wireless interface (48 of Figure 3, 56 of Figure 4)) to use between a mobile device (one of user devices 16, 18, 20, 22, 24, and 26) and a destination. Jones discloses the limitation of operating using the determined interface in the transitions to states 1,2, or 4 (as appropriate) in figure 9. Jones also discloses the limitation of altering a record of information transmitted across a network from a mobile unit to a destination based on an acknowledgment by the destination of receipt of the transmitted information in the network layer 42 of Figure 2. In the passage from line 65 of column 3 through line 14 of column 4, Jones clearly suggests the use of TCP at the network layer. The TCP protocol is well known in the art to maintain a record of

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what data has been transmitted (as well as what subset of that transmitted has been acknowledged by the receiver). Thus, Jones inherently discloses this limitation through the use of TCP. Note that claim 23 also has the limitations of maintaining a count of information transmitted from a mobile unit to a home network, receiving at the mobile unit an acknowledgement of received information, and altering the count based on the acknowledgement, all of which are clearly similarly disclosed by Jones in the use of TCP as the network layer. Jones discloses the limitation of automatically determining if a more preferable interface should be opened, and if so seamlessly changing to the more preferable interface by closing a current interface, and establishing the new interface connection in Figures 3 and 10. Lines 63-65 of column 4 clearly disclose the limitation that the selection of interfaces is automatic. If switching from wireless to wired (or vice versa), the selected interface is opened (step 704 of Figure 10) and the current interface is closed (steps 1003 or 1004 of Figure 10). Note that Jones clearly discloses this changing of interfaces as being seamless in lines 26-28 of column 6. As indicated above, Jones suggests the use of TCP as a network layer and thus also inherently discloses the limitation of transmitting information from the mobile unit to the destination based on the record after the mobile unit establishes a new interface connection to the destination starting with information immediately adjacent to information most recently transmitted to the destination. It is well known that TCP maintains information about what data has been transmitted and that the information is transmitted sequentially with the exception of an acknowledgement timeout. Since the interface change is clearly "seamless" as indicated by Jones throughout (see lines 26-28 of column 6, for example), the behavior of the network layer will continue transparently even when the interfaces are changed. This will result in transmitting

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information immediately adjacent to the most recently transmitted information. This limitation differs slightly in claim 23 in that the information is transmitted by the mobile unit starting with information immediately adjacent to the received information. This is also clearly anticipated by the use of TCP at the network layer. As is well known, TCP provides reliable communications by retransmitting data when it is lost. In Jones, if data is lost (on the wireless interface, for example) prior to the interface switch, TCP will recognize this and transmit the data immediately adjacent to the last received (and acknowledged) information when the acknowledgement timer corresponding to the lost data expires, which is likely to happen after the interface switch.

Although Jones clearly indicates considering user preference in determining the interface to use (see user preference decision block 904 of Figure 9), Jones does not disclose expressly the limitation that a list of interfaces from most to least preferable is used (since only the most preferable interface of the two need be indicated). Jones also does not disclose the limitation of automatically determining whether at least one additional interface should be opened based on a usage parameter and, if so, automatically opening the at least one additional interface and adding the at least one additional interface to the list. Jones also does not disclose the limitation of periodically ranking the interfaces on the list of interfaces from most preferable to least preferable.

Cruickshank discloses the limitation that said automatically determining using a list of interfaces ranked from most preferable to least preferable, and selecting a most preferable available interface on the list in Figure 3A. While the list is not explicitly drawn in this figure, it is clear that the order in which the interfaces is checked (WAN, Internet, PSTN) lists the order of preference of these interfaces; if the WAN interface is available, it will be used, regardless of the

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availability of the other interfaces. Cruickshank further discloses the limitation of automatically determining whether at least one additional interface should be opened based on a usage parameter and, if so, automatically opening the at least one additional interface and adding the at least one additional interface to the list in lines 41-60 of column 3. Specifically, the adding of another interface is disclosed in lines 50-53 of column 3 which describes the clearing of the "poor Voice Quality" flag. This interface is not part of the available list of interfaces when the flag is set and it is opened and added back to the list as an available interface when the flag is cleared; no calls will be routed over this interface when the flag is set, but they will be added again when the flag is cleared. The usage parameter is the quality of service that is determined in line 44 of column 3. This passage (lines 41-60 of column 3) further discloses the limitation of periodically ranking the interfaces on the list of interfaces from most preferable to least preferable. This passage describes how the quality of service is periodically checked to determine whether to set the poor Voice Quality flag. When the flag is set and/or cleared, the effective priority of the interfaces changes (the PSTN becomes the most preferable link when the flag is set and the least preferable when the flag is cleared). Thus, the interfaces are periodically ranked based on this quality of service.

Jones and Cruickshank are analogous art because they are from the same field of endeavor of selecting among various available communications interfaces. At the time of the invention it would have been obvious to a person of ordinary skill in the art to modify Jones to select among the interfaces of Cruickshank when using the wired interface. The motivation for doing so would have been to reduce costs to the user as indicated in the abstract of Cruickshank.



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Therefore, it would have been obvious to combine Cruickshank with Jones for the benefit of reducing user costs to obtain the invention as specified in claim 1, 9, and 23.

Regarding claims **2 and 10**, Jones discloses the limitation that the record includes an amount of information transmitted from the mobile unit to the destination in the suggestion of using TCP at the network layer discussed above.

Regarding claims **3, 11, and 27**, Jones discloses the limitation of the acknowledgment including an amount of the received information in the use of TCP at the network layer; the acknowledgment number field in a TCP segment anticipates this limitation.

Regarding claims **5 and 13**, the limitation that the information is transmitted by the mobile unit starting with information immediately adjacent to the received information is also clearly anticipated by the use of TCP at the network layer. As is well known, TCP provides reliable communications by retransmitting data when it is lost. In Jones, if data is lost (on the wireless interface, for example) prior to the interface switch, TCP will recognize this and transmit the data immediately adjacent to the last received (and acknowledged) information when the acknowledgement timer corresponding to the lost data expires, which is likely to happen after the interface switch.

Regarding claims **6 and 14**, the limitation of removing received information from the record is well known in the use of TCP. If this is not done, the size of the transmit buffer in the transmitting device (mobile unit) limits the total amount of data that can be transmitted in a given session. This is not conducive to the transmission of large amounts of data as is often done using TCP.

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Regarding claims **7, 15, and 26**, Jones discloses the limitation that the new interface includes a reliable link in the use of TCP at the network layer. TCP is well known to provide reliable transport for application data and thus each interface provides a reliable link through its network layer.

Regarding claim **24**, Jones discloses the limitation of transmitting information starting with information immediately adjacent to the information at the end of the count information in the use of TCP at the network layer. It is well known that TCP maintains information about what data has been transmitted and that the information is transmitted sequentially with the exception of an acknowledgement timeout. Since the interface change is clearly “seamless” as indicated by Jones throughout (see lines 26-28 of column 6, for example), the behavior of the network layer will continue transparently even when the interfaces are changed. This will result in transmitting information immediately adjacent to the most recently transmitted information.

Regarding claims **8 and 16**, Jones discloses the limitation of the destination including a home network associated with the mobile unit in lines 18-24 of column 1; the wired company network is the home network.

Regarding claim **34**, the combination of Jones and Cruickshank described above discloses the limitation of removing an unavailable interface from the list of interfaces in lines 41-60 of column 3. When the quality of service of the WAN interface to a PBX is not high enough to support an acceptable voice conversation, the interface is effectively removed from the list of interfaces via the poor Voice Quality flag.

Regarding claims **33 and 35**, the combination of Jones and Cruickshank described above discloses the limitations of these claims. As described above, usage parameter is the quality of

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service and the determination to effectively remove and interface from the set of available interfaces is based on whether the quality of service is not high enough to support an acceptable voice conversation. The limitation of claims 33 and 35 of determining the availability of an interface based on a factor chosen from the group of factors listed in this claim is disclosed in lines 34-36 of column 2 which indicates quality of service can be based on packet delay or throughput, among other parameters. Packet delay is equivalent to the latency of an interface and throughput is equivalent to the connection speed of an interface; thus the usage parameter is chosen from a group comprising all the parameters listed in claims 33 and 35 as one of these parameters may be selected.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert C. Scheibel whose telephone number is 571-272-3169. The examiner can normally be reached on Monday and Thursday from 6:30-5:00 Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema S. Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*RES 2-10-06*

Robert C. Scheibel  
Examiner  
Art Unit 2666

*Ton Martin*

DANG TON  
PRIMARY EXAMINER